



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Clifton Alexander,
Department of Law and Public Safety

Administrative Appeal

CSC Docket No. 2020-1550

ISSUED: NOVEMBER 6, 2020 (SLD)

Clifton Alexander, a former Senior Security Officer,¹ represented by Susan L. Swatski, Esq., appeals his failure to be timely promoted and he requests retroactive compensation.

In his December 5, 2019 appeal to the Civil Service Commission (Commission), the appellant argues that in the past 15 years he has initiated multiple grievances, and an “Unfair Practice Charge” related to the appointing authority’s failure to promote him and to properly compensate him for the duties he was performing. The appellant asserts that due to his union’s failure to effectively assist him, he is filing the instant appeal.

The appellant asserts that in 2006, his name appeared as the fourth-ranked eligible on the Senior Security Officer (PS5925P) eligible list.² The appellant maintains that the first two listed eligibles were not interested in the position, and despite being told that he was “selected,” the appointing authority bypassed his name and appointed two individuals who scored lower than him on the subject examination.³ The appellant contends that these promotions violated Civil Service

¹ Agency records reveal that the appellant retired, effective February 20, 2020.

² Agency records reveal that the PS5925P eligible list promulgated on January 12, 2006 and expired on January 11, 2009, and contained the names of 13 eligibles, including the appellant and L.R. who were tied as the fourth ranked eligibles, and E.H., a veteran who was listed as the sixth ranked eligible.

³ Agency records reveal that the first and second ranked eligibles were interested in future opportunities only, and the appointing authority appointed L.R., who was tied with the appellant as the fourth ranked eligible, and E.H. who was listed as the sixth ranked eligible. It is noted that both L.R. and E.H. were serving provisionally in the subject title.

law and rules and that the appointing authority violated departmental policies and procedures when it failed to promote him, the “most qualified and highest-ranking person.” Moreover, the appellant maintains that he submitted multiple internal complaints and an Unfair Practices Charge to no avail.

Additionally, the appellant maintains that from January 2006 through July 2016, he performed the work of a “Sector Senior Squad Supervisor,” during which he supervised Senior Security Officers. The appellant maintains that he was never properly classified nor was he properly compensated during that time. The appellant maintains that he complained to his union and the appointing authority, but the situation was never remedied. The appellant notes that in August 2016, he filed a classification appeal, and was subsequently found to be serving as a Senior Security Officer.⁴ However, the appellant contends that he was not awarded any back pay or benefits. Consequently, he maintains that he is entitled to differential back pay and benefits from January 2006 through July 2016.

The appellant argues that on October 17, 2017 he was “demoted” with only three days’ notice, and the position of Senior Security Officer was “filled” by an individual who was “ranked less favorably” and who possessed less seniority than the appellant. The appellant further asserts that there were “multiple” Senior Security Officer positions that were filled by individuals who did not qualify for the positions during that time. The appellant asserts that he complained to his union and the appointing authority, that despite being the “highest ranked eligible” Security Officer, he was wrongfully bypassed for two individuals who did not have his years of experience. The appellant maintains that by “bypassing” him, the appointing authority violated departmental policies and procedures. The appellant also argues that his demotion was improper as he should have retained the position of Senior Security Officer, and therefore he is entitled to differential back pay from the date of his demotion until he was returned to the subject title. Moreover, he asserts that his demotion was in retaliation for his complaint regarding the appointing authority’s failure to properly compensate him from 2006 to 2016. The appellant maintains that despite filing a grievance on the matter, no decision was made.

As a result of the foregoing, the appellant asserts that he filed an Unfair Practice Charge with the Public Employment Relations Commission (PERC) on January 22, 2018. Subsequently, on January 26, 2018, PERC advised the appellant that his allegations should be pursued through the Commission.

Agency records reveal, in relevant part, that the appellant applied for and passed the promotional examination for Senior Security Officer (PS4097P). The resulting eligible list of seven names, including the appellant as the fifth-ranked

⁴ Agency records indicate that the appellant was sent a letter, dated September 30, 2016, from this agency, notifying him of the change to his title, effective August 20, 2016. The letter further indicated that he could appeal the determination within 20 days, to the Merit System Board, the predecessor of the Commission. However, there is no record that the appellant appealed this determination.

eligible, promulgated on August 3, 2017 and expired on August 2, 2020. Two certifications were issued from the PS4097P eligible list. The first certification, dated August 3, 2017, contained the names of all seven eligibles. The appellant and D.H., the seventh ranked eligible, were listed as serving provisionally in the subject title at the time of the certification. The appointing authority returned the certification as follows:

Position	Rank	Name	Veteran Status	Disposition
1	1	T.S.	Non-veteran	Appointed, October 14, 2017
2	2	G.S.	Non-veteran	Appointed, October 14, 2017
3	3	M.C.	Veteran	I2
4	3	V.G.	Non-veteran	I3
5	5	Appellant	Non-veteran	I3
6	6	M.W.	Non-veteran	I3
7	7	D.H.	Non-veteran	I3

I2 – Reachable for appointment, not selected.

I3 – Not Reachable for appointment.

The appointing authority further noted that the appellant and D.H. were both returned to their permanent titles. Subsequently, another certification was issued from the PS4097P eligible list on February 22, 2019. In disposing of that certification, the appointing authority appointed M.C., V.G., the appellant and M.W., effective March 30, 2019. It also removed D.H. from the subject eligible list as he was no longer interested in the position.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) and *N.J.A.C.* 4A:4-6.6(a)1 provide that an appeal must be filed within 20 days of notice of the action, decision or situation being appealed. Although the appellant presents substantive challenges regarding events that took place from 2006 through 2016, the controlling issue in this matter is whether the appellant’s appeals of his bypass in 2006, and the appointing authority’s failure to “properly compensate” him from 2006 through 2016, his return to his permanent title 2017 and the appointing authority’s failure to properly compensate him after his return to his permanent title are timely. In the instant matter, the appellant asserts that he filed complaints and or grievances with his union and the appointing authority, as well as a complaint with PERC. However, he provides no explanation as to why he did not file an appeal with the Commission until December 2019. Moreover, with regard to the appellant’s complaints concerning his classification and compensation from 2006 through 2016, it is noted that the appellant filed a classification review arguing that he was misclassified. In a September 30, 2016 letter from this agency, the appellant was notified that it was determined that the proper classification of his title was Senior Security Guard, effective August 20, 2016. The appellant was also notified that if he disagreed with the determination, he could

appeal the determination within 20 days. However, no appeal was filed. Further, PERC dismissed his complaint in January 2018 advising him to seek redress via the Commission, yet the subject appeal was not filed until nearly two years later in December 2019. The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeal unreasonably exceeds that threshold of finality. Thus, it is clear that the appellant's instant appeal is untimely.

Nor is there any basis in this particular case to extend or to relax the time for appeal. See *N.J.A.C.* 4A:1-1.2(c) (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). In this case, the appellant has not presented any reason that would excuse his delay in filing his appeal. Instead, the appellant maintains that he filed grievances, but he received no answer. However, he fails to explain why he did not appeal to the Commission earlier. Moreover, as noted above, he was expressly notified in 2016 that he could appeal his classification, and in 2018 by PERC that he should seek redress via the Commission, yet he failed to timely do so. Further, there is no indication in the record that he appealed the classification of his position after his return to his permanent title in 2017. Furthermore, the Commission notes that the failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. See *Savage v. Old Bridge-Sayreville Med. Group*, 134 *N.J.* 241, 248 (1993) (ignorance of the specific basis for legal liability does not operate to extend time to initiate legal action).

Nevertheless, while the appellant's instant appeal is untimely, the Commission is compelled to address several of the appellant's arguments. With regard to the appellant's bypass on the July 25, 2006 certification from the Senior Security Guard (PS5925P) eligible list, and his non-appointment on the November 8, 2017 certification from the Senior Security Guard (PS4097P) eligible list, the appellant argues that he was the most qualified and the highest ranked and thus, was entitled to the appointment on both occasions. However, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii, the "Rule of Three," allows an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. *N.J.A.C.* 4A:2-1.4(c), in conjunction with *N.J.A.C.* 4A:4-4.8(b)4, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper. The Rule of Three

allows an appointing authority to use discretion in making appointments and, as long as that discretion is utilized properly, an appointing authority's decision will not be overturned. *Compare, In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984) (Hearing granted for individual who alleged that bypass was due to anti-union animus); *Kiss v. Department of Community Affairs*, 171 *N.J. Super.* 193 (App. Div. 1979) (Individual who alleged that bypass was due to sex discrimination afforded a hearing). On the July 25, 2006 certification from the PS5925P eligible list, although the appellant was reachable for appointment, the appointing authority appointed an eligible tied with the appellant for appointment, and the next ranked eligible, thereby bypassing him for appointment. Although the appellant claims that his bypass was improper as it violated Civil Service law and rules and departmental policies, as noted above, appointing authorities are given the discretion to select among the top three interested eligibles, which is what happened. Moreover, although the appellant claims that his non-appointment from the November 8, 2017 certification of the PS4097P eligible list also violated Civil Service law and rules, agency records reveal that the appellant was not reachable for appointment on that certification. In this regard, the appointing authority appointed the first two listed eligibles, the next eligible on the certification was a veteran, and thus, a veteran headed the list and the appellant was not reachable for appointment. Consequently, the appointing authority was required to be return the appellant to his permanent title. As such, he was not "demoted." Moreover, as a non-veteran eligible the appellant was not entitled to an appointment form either eligible list. In this regard, a non-veteran eligible whose name merely appears on an eligible list does not have a vested right to appointment. *See In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

Finally, with regard to the appellant's claims concerning the classification of his position, it is noted that *N.J.A.C.* 4A:3-3.9(f)1 provides that in State service, the effective date of implementation of the reclassification shall be the pay period immediately after 14 days from the date this agency received the appeal or reclassification request. Therefore, even if the appellant had filed an appeal earlier, the earliest date available would have been 14 days from the date this agency received the appeal, and not years earlier. As such, he would not have been entitled to any differential back pay.

ORDER

Therefore, it is ordered that this appeal be dismissed as untimely.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF NOVEMBER 2020

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Clifton Alexander
Susan L. Swatski, Esq.
Jessica Chianese
Agency Services
Records Center